

§ 768.6

that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components incorporated in the items alleged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following:

(1) Foreign manufacturers' catalogs, brochures, operation or maintenance manuals;

(2) Articles from reputable trade and technical publications;

(3) Photographs;

(4) Depositions based on eyewitness accounts; and

(5) Other credible evidence.

NOTE TO PARAGRAPH (c) OF THIS SECTION:
See Supplement No. 1 to part 768 for additional examples of supporting evidence.

(d) Upon receipt of a FAS or TAC certification, BXA will review it to determine whether there is sufficient evidence to support the belief that foreign availability may exist. If BXA determines the FAS or TAC certification is lacking in supporting evidence, BXA will seek additional evidence from appropriate sources, including the claimant or TAC. BXA will initiate the assessment when it determines that it has sufficient evidence that foreign availability may exist. Claimant and TAC certified assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria described in § 768.6 of this part and the examples of evidence described in Supplement No. 1 to part 768 when assembling supporting evi-

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dence for inclusion in the FAS or TAC certification.

§ 768.6 Criteria.

BXA will evaluate the evidence contained in a FAS or TAC certification and all other evidence gathered in the assessment process in accordance with certain criteria that must be met before BXA can recommend a positive determination to the Secretary. The criteria are defined in § 768.1(d) of this part. In order to initiate an assessment, each FAS and TAC certification should address each of these criteria. The criteria are statutorily prescribed and are:

- (a) Available-in-fact;
- (b) Non-U.S. source;
- (c) Sufficient quantity; and
- (d) Comparable quality.

§ 768.7 Procedures.

(a) *Initiation of an assessment.* (1) Once BXA accepts a FAS or TAC certification of foreign availability, BXA will notify the claimant or TAC that it is initiating the assessment.

(2) BXA will publish a FEDERAL REGISTER notice of the initiation of any assessment.

(3) BXA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which BXA has initiated an assessment. Each such department, agency, and contractor shall provide BXA all relevant information concerning the item. BXA will invite interested departments and agencies to participate in the assessment process (See paragraph (e) of this section).

(b) *Data gathering.* BXA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence described in § 768.5 (b) and (c) of this part. As soon as BXA initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from: industry sources